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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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THE PEOPLE,	C060223
Plaintiff and Respondent,	(Super. Ct. No. 08F04609)
v.	
MICHAEL MIMITTE,	
Defendant and Appellant.	

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On June 7, 2008, Sacramento Police Officer Kelli Streich was on patrol in a marked car when she spotted defendant Michael Mimitte. Officer Streich approached defendant, who appeared nervous and "fidgety." Streich attempted to speak to defendant and he began to walk away. Streich told defendant to stop and

"interlace his fingers" and put his hands behind his head. Defendant was not cooperating and Streich called for backup.

When Officer Streich called for backup, defendant took off running. As he ran off, however, defendant dropped the beanie he was wearing on his head and Streich saw two baggies fall from defendant's "person" onto the ground. The baggies contained 0.17 grams of rock cocaine, and 0.90 grams of marijuana. Streich called for defendant to stop but he continued to run through an apartment complex, hopping two fences.

Defendant was finally apprehended approximately three blocks from where Officer Streich initially stopped him. After receiving his *Miranda*<sup>1</sup> rights, defendant admitted that he ran because he did not want to go back to jail; he thought he could get away. Defendant also admitted to smoking "rock."

Defendant was later charged with possession of a cocaine base (Health & Saf. Code, § 11350, subd. (a)) and resisting a peace officer (Pen. Code, § 148, subd. (a)(1)). It was further alleged that defendant previously served three prison terms. (*Id.*, § 667.5, subd. (b).) Defendant pleaded not guilty.

Prior to trial, defendant filed a *Marsden*<sup>2</sup> motion; the court considered defendant's argument, listened to counsel's statement, and denied defendant's motion. Defendant filed another two *Marsden* motions before the case was submitted to the

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

jury. Each of those motions was considered and denied. Prior to sentencing, defendant filed a fourth *Marsden* motion, which also was denied.

Defendant was later sentenced to an aggregate term of five years in state prison, two years for possession of cocaine base, and three years for his three prior prison terms. He was sentenced to time served for resisting a peace officer. Defendant was also awarded 194 days of custody credit and ordered to pay a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), a \$200 restitution fine (*id.*, § 1202.4, subd. (b)), and a \$200 parole revocation fine (*id.*, § 1202.45).

Defendant appeals.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

## DISPOSITION

The judgment is affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, SCOTLAND, P. J.

\_\_\_\_\_, SIMS, J.